IN THE COURT OF APPEALS OF THE STATE OF ALASKA

SHERRY WHITNEY, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-13078 Trial Court No. 1KE-17-00240 CR SUMMARY DISPOSITION No. 0160 — September 23, 2020

Appeal from the Superior Court, First Judicial District, Ketchikan, William B. Carey, Judge.

Appearances: Margi A. Mock, Attorney at Law, under contract with the Public Defender Agency, and Beth Goldstein, Acting Public Defender, Anchorage, for the Appellant. Elizabeth T. Burke, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Kevin G. Clarkson, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Sherry Whitney was convicted of three counts of second-degree burglary after she removed a number of items from a storage unit in Ketchikan.[1] At trial, Whitney testified that she believed that her friend, David Mock, was the owner of the storage unit, and that she had retrieved the items at his request. In support of her version of events,

[1] AS 11.49.310.

Whitney testified as to Mock's underlying good character: she testified that she had known Mock for five or six years and that he was "kind," "loyal," "a good person," and "a very great guy," and that she "trusted him."

In response to this testimony, the State sought to cross-examine Whitney on her statement to police in an unrelated criminal case that she used methamphetamine and that she regularly obtained her methamphetamine from Mock. Whitney objected to this evidence as irrelevant and highly prejudicial.

The superior court concluded that this evidence was relevant, given Whitney's testimony about the nature of her relationship with Mock and her testimony about his good character. But the superior court only allowed the State to make a general inquiry about whether Mock was Whitney's drug dealer. The superior court refused to allow additional questions about Whitney's statements to police, the length of Whitney and Mock's drug-dealing relationship, or the fact that the drug in question was methamphetamine.

Whitney now appeals. She argues that the evidence about her drug-dealing relationship with Mock was irrelevant and inadmissible prior bad acts evidence under Evidence Rule 404(b)(1), and that the evidence was more prejudicial than probative under Rule 403.

We might question the admission of this evidence if Whitney had only asserted, without further elaboration, that she believed Mock owned the storage unit. But Whitney went beyond this: she sought to support her own version of events with testimony about Mock's good character. The effect of this testimony was to suggest to the jury that, as far as Whitney was aware, Mock was not the sort of person who would ever ask her to engage in criminal activity. Evidence of the drug-dealing relationship between Whitney and Mock was relevant to rebut this assertion, and therefore relevant for a non-propensity purpose under Rule 404(b)(1). And given the limited manner in

which this evidence was introduced, we conclude that the superior court did not abuse its discretion in finding that the probative value of this evidence was not outweighed by its potential for unfair prejudice.[2]

The judgment of the superior court is AFFIRMED.

[2] *See Johnson v. State*, 889 P.2d 1076, 1081 (Alaska App. 1995); *see also Bluel v. State*, 153 P.3d 982, 986 (Alaska 2007).